



faegredrinker.com

Susan M. Sharko
Partner
susan.sharko@faegredrinker.com
+1 973 549 7350 direct

Faegre Drinker Biddle & Reath LLP
600 Campus Drive
Florham Park, New Jersey 07932
+1 973 549 7000 main
+1 973 360 9831 fax

August 22 2024

VIA ECF

Honorable Rukhsanah L. Singh, U.S. Magistrate Judge
United States District Court- District of NJ
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Court Room 7W
Trenton, NJ 08608

Re: *In re: Johnson & Johnson Talcum Powder Products, Marketing, Sales Practices, and Products Liability Litigation*
Case No.: 3:16-md-02738-MAS-RLS

Dear Judge Singh:

Pursuant to the Court's request for bi-monthly reports, the parties jointly offer the following updates on recent activities in the MDL.

Expert Disclosures and Discovery:

- Depositions of all of the experts have been completed.
- On April 18, 2024, Defendants requested another deposition of Plaintiffs' expert Dr. Saed on the basis that Plaintiffs' other experts rely on multiple publications by Dr. Saed since his last deposition. Plaintiffs have withdrawn Dr. Saed as a Plaintiffs' expert and object to an additional deposition. Defendants will seek leave from the Court to file a Motion to Compel Dr. Saed's deposition.
- On May 10, 2024, Defendants served a new set of requests for production concerning a new publication by Dr. Saed regarding talcum powder and ovarian cancer. Plaintiffs have advised Defendants that the withdrawal of Dr. Saed as an expert makes further requests and productions moot. Defendants object to Plaintiffs' refusal to respond to the discovery request and will seek leave from the Court to file a Motion to Compel production.
- On August 1, 2024, the PSC filed a letter seeking to compel Defendants to produce invoices for all expert work relating to talc claims, whether related to this MDL or not (ECF 33052). On August 1, 2024, Defendants filed a letter in response (ECF 33053) noting the PSC's "motion" is procedurally improper under the Local Rules as it is not actually a motion. On August 9th, the Court instructed the parties to meet and confer no later than August 20th (ECF 33077). If the parties remain at an

Honorable Rukhsanah L. Singh,
U.S. Magistrate Judge

- 2 -

August 22, 2024

impasse after that meeting, the Court ordered Defendants to file their Opposition by August 27th, and the PSC to file their Reply by September 4th. On August 19th, the parties met and conferred on the issue but were unable to resolve the dispute. Defendants will file their Opposition to the motion by August 27th. The PSC will file a reply by September 4, 2024.

- On July 30, 2024, Defendants filed a Motion to Strike Rebuttal Expert Report of Dr. Elizabeth Stuart (ECF 33038). Plaintiffs' Opposition was filed on August 20, 2024 (ECF 33102). Defendants' Reply is due by August 27, 2024.

Plaintiffs' Steering Committee's Motion to Establish a Census:

- On July 10, 2024, the PSC filed a Motion for the Entry of an Order to Establish a Census and Require the Provision of Data by Persons with Unfiled Claims/Cases to Confirm the Plaintiff Suffers from Epithelial Ovarian Cancer, Fallopian Tube Cancer, or Primary Peritoneal Cancer (ECF 32931). Defendants' Opposition was filed July 19, 2024 (ECF 32985). Plaintiffs' Reply to Defendants' Opposition was filed July 29, 2024 (ECF 33032).

Dispositive Motions & *Daubert* Motions:

- Rule 702 *Daubert* Motions were filed by the parties on July 23, 2024, except for Plaintiffs' motion addressed to defense expert Dr. Jeff Boyd which was filed on August 2, 2024 by agreement. Oppositions are due on August 22, 2024. On August 20, 2024, the PSC requested permission from the Court to file a total of 550 pages for the opposition briefs, with Defendants agreeing to a total of 425 pages (ECF 33100). The Court granted Plaintiffs leave to file a total of 450 pages for their opposition briefs. (ECF 33105).
- Plaintiffs filed motions to exclude the geology opinions of Drs. Poulton and Webb (ECF 32996); exclude the opinions of Dr. Sutcliffe (ECF 32998); exclude the opinions of Drs. Finan, Saenz, and Holcomb (ECF 32999); exclude the opinions of Dr. Permuth (ECF 33001); exclude the opinions of Drs. Longacre and Felix (ECF 33002); exclude the opinions of Drs. Sanchez, Wylie, and Su (ECF 33006); exclude the opinions of Dr. DiFeo (ECF 33010); exclude the opinions of Dr. Kornak (ECF 33011); exclude the opinions of Dr. Boyd (ECF 33060); and in support of Chief Judge Wolfson's 2020 *Daubert* Opinion (ECF 33009).
- Defendants filed motions to exclude the opinions of Drs. Clarke-Pearson with respect to Ms. Rausa, Ms. Converse, and Ms. Newsome (ECF 33007); exclude the opinions of Dr. Wolf with respect to Ms. Bondurant, Ms. Gallardo, and Ms. Judkins (ECF 33003); exclude the opinions of Drs. Kessler, Plunkett, Sage, and Newman (ECF 33000); exclude the opinions of Dr. Godleski (ECF 33004); exclude the opinions of Plaintiffs' experts regarding alleged heavy metals and fragrances (ECF 33005); exclude Plaintiffs' experts' general causation opinions (ECF 33008); exclude Plaintiffs' experts' opinions regarding biological plausibility/mechanism (ECF

Honorable Rukhsanah L. Singh,
U.S. Magistrate Judge

- 3 -

August 22, 2024

33013); and exclude Plaintiffs' experts' asbestos-related opinions (ECF 33012).

- Per Order of July 22, 2024 (ECF 32991), dispositive motions are due on August 23, 2024, oppositions on September 23, 2024, and replies on October 11, 2024.
- On August 2, 2024, Your Honor extended the deadline for the PSC to identify the case(s) to be selected for trial to September 5, 2024 (ECF 33059).

Plaintiffs' Subpoena to Public Library of Science (PLOS):

- On March 20, 2024, the PSC served the Public Library of Science (PLOS) with a subpoena for information related to a manuscript submitted by Plaintiffs' expert Dr. Saed to PLOS in 2020.
- On April 12, 2024, Counsel for PLOS served an objection to the subpoena claiming privilege and confidentiality and attaching to the objection a Privilege Log on counsel for the Plaintiffs.

Defendants' Motion to Compel Inspection of Dr. William Longo's Laboratory (ECF 3227):

- On June 17, 2024, Special Master Schneider denied Defendants' Motion to Compel the Inspection of Dr. William Longo's Laboratory (ECF 32826). Defendants filed an objection to the Special Master's Order on July 1, 2024 (ECF 32872). Plaintiffs' Opposition to Defendants Objections to the Special Master's Order was filed on July 22, 2024 (ECF 32992). Defendants filed their Reply on July 29, 2024 (ECF 33035).

Notice of Subpoena to Paul Hess:

- Defendants filed an Amended Notice of Intent to Serve Subpoena on Paul Hess on April 23, 2024 (ECF 32037). The subpoena was for a videotaped deposition of Mr. Hess, a non-party and employee of Plaintiffs' expert, Dr. William Longo. The PSC filed a motion to quash, which was denied on June 12, 2024 (ECF 32817).
- The deposition of Mr. Hess occurred on July 10, 2024. The PSC raised objections to the scope of the inquiry of Mr. Hess at the beginning of the deposition. The Special Master heard argument from the parties, ruled on the objections, and provided instructions for the scope of questions to be asked the witness. It is the PSC's position that the deposition proceeded in keeping with Special Master Schneider's orders. On July 22, 2024, Defendants filed a Motion to Compel Hess's testimony and asked for Sanctions (ECF 32993- 26). Plaintiff's' filed opposition on August 1, 2024 (ECF 33056). Paul Hess, through his personal counsel, filed opposition on August 1, 2024 (ECF 33058). Defendants filed their reply on August 2, 2024 (ECF 33057). The matter was heard by Special Master Schneider on August 5, 2024. On August 6, 2023, Special Master Schneider granted in part and denied in part Defendants' motion (ECF 33067). Defendants objected to Special Master

Honorable Rukhsanah L. Singh,
U.S. Magistrate Judge

- 4 -

August 22, 2024

Schneider's order on August 20, 2024 (ECF 33103, 33104).

Subpoenas to Beasley Allen Law Firm, Smith Law Firm, and Ellington Management Group:

- On May 20 and 21, 2024, Defendants filed Notices of Intent to Serve Subpoenas on the Beasley Allen Law Firm (ECF 32201), Ellington Management Group (ECF 32215), and the Smith Law Firm (ECF 32226). On May 30, 2024, the Plaintiffs' Steering Committee filed a Motion to Quash or for Protective Order regarding these subpoenas (ECF 32483). Also on May 30, 2024, the Beasley Allen Law Firm separately filed a Motion to Quash and/or for Protective Order concerning the subpoena directed to the Beasley Allen Law Firm (ECF 32445). On June 3, 2024, Allen Smith and the Smith Law Firm filed a Motion to Quash the Subpoena directed to them (ECF 32603). Defendants filed one opposition to all three motions on June 17, 2024 (ECF 32827). Non-Party Beasley Allen served their reply brief on June 24, 2024 (ECF 32858). All three motions were heard on July 1, 2024 in a hearing conducted by Special Master Schneider. On July 9, 2024, Special Master Schneider granted all three Motions to Quash (ECF 32926). On July 21, 2024 Defendants J&J and LLT Mgt. filed their Notice of Objections to Special Master Order No. 25 (ECF 32926). On August 5, 2024, responses in opposition to the Objection were filed by Beasley Allen (ECF 33061); the PSC (33062); and the Smith Law Firm (ECF 33064). On August 12, 2024, Defendants filed their Reply (ECF 33085).

Subpoena to Analysis Group LLC:

- On June 11, 2024, the PSC served Analysis Group LLC with a subpoena for information related to Defendants' expert Dr. Kathleen Sutcliffe and her work on this litigation. The Defendants view the subpoena as overbroad, raising issues of financial disclosures for all experts in the MDL. The parties will meet and confer on the issues.

Plaintiff Profile Forms:

- On June 11, 2024, Your Honor entered Defendants' Order to Show Cause why the cases listed in Exhibit A attached to the Order should not be dismissed with prejudice for their failure to provide Defendants with Plaintiff Profile Forms (ECF 32811). The Plaintiffs subject to the Order had until July 2, 2024, to show cause why their case should not be dismissed with prejudice. On July 17, 2024, Defendants filed a final dismissal order listing 2016-2017 cases subject to the June 11th OTSC which failed to show good cause to the Court (ECF 32980). The PSC has no objection to the order as submitted by Defendants on July 17, 2024 (ECF 32980). The Defendants request that the final dismissal order be entered.
- On August 15, 2024, Your Honor entered Defendants' Order to Show Cause regarding PPF deficiencies (ECF 33096). Plaintiffs subject to the OTSC have until

Honorable Rukhsanah L. Singh,
U.S. Magistrate Judge

- 5 -

August 22, 2024

September 5, 2024, to show cause why their case should not be dismissed with prejudice. Defendants will file a final dismissal order after September 19, 2024, listing the cases subject to the August 15th OTSC which failed to show good cause to the Court.

- Defendants also filed an OTSC on July 1st (ECF 32868) regarding cases filed and/or transferred to this MDL in 2020 which remain deficient in serving PPFs. The cases listed on the July 1st OTSC were previously listed to the Court on the May and June PPF Reports (ECF 32127 & ECF 32599). Defendants respectfully request the July 1st OTSC be entered at the Court's earliest convenience.
- With regard to PPF Reports, the parties agree that if a Plaintiff contends that Defendants have mistakenly placed a Plaintiff's case on the deficiency list, counsel for the Plaintiff will reach out directly to defense counsel to advise of that error with Defendants to correct the list as needed. The parties agree that Plaintiffs should confirm the accuracy of the MDL Centrality information and close the MDL Centrality account for a particular plaintiff when a case is dismissed. Defendants' deficiency list will be updated as corrections are received. The Plaintiffs should be reminded to check the lists each month for their cases and to promptly notify Defendants if they believe a case is listed in error, or if they have thereafter served the discovery. Defendants have agreed to promptly revise the list to remove cases included in error.

CMO 9 Notices:

- On August 14, 2024, Defendants filed an Order to Show Cause (ECF 33089) why cases listed on Exhibit A should not be dismissed with prejudice for their failure to either file a Notice of Inability to Substitute ("NIS"), move to substitute the proper party plaintiff, or file an amended complaint by July 12, 2024, pursuant to Paragraphs 2 and 3 of the Court's May 15, 2024, Order Regarding CMO 9 Notices (ECF 32181). Defendants respectfully request the OTSC be entered at the Court's earliest convenience.

New Cases:

- A complaint seeking certification of classes for medical monitoring and other relief was filed on June 17, 2024 (*Joni S. Bynum et al. V. LLT Management LLC, et al.*, Civil Action 3:24-cv-07065). On August 21, 2024, Defendants filed a motion to dismiss the *Bynum* complaint seeking certification of a medical monitoring class (ECF 11).
- A class action complaint seeking to declare that certain transactions implemented in conjunction with LTL's bankruptcy filings were fraudulent was filed on May 22, 2024 (*Rebecca Love et al., v. LLT Management LLC, et al.*, Civil Action 3:24-cv-06320). On June 11, 2024, Plaintiffs filed a Motion for TRO and Order to Show Cause Why a Preliminary Injunction Should Not Issue (*Rebecca Love, et al.*, Civil

Honorable Rukhsanah L. Singh,
U.S. Magistrate Judge

- 6 -

August 22, 2024

Action 3:24-cv-06320, Doc. 6). Defendants' Brief in Opposition to the TRO and Preliminary Injunction was filed on June 18, 2024 (Civil Action 3:24-cv-06320, Doc. 16). On June 28, 2024, Judge Shipp issued a Memorandum Opinion and Order denying Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Civil Action 3:24-cv-06320, Doc. 31). On July 3, 2024, Plaintiffs filed a Notice of Appeal of Judge Shipp's decision to the United States Court of Appeals for the Third Circuit (Civil Action 3:24-cv-06320, Doc. 37). On July 5, 2024, Plaintiffs-Appellants filed an Opposed Emergency Motion for Injunction Pending Appeal or, Alternatively, to Expedite Appeal (Doc. 5). On July 12, 2024, the Johnson & Johnson Defendants filed a response. (Doc. 12). On July 15, Plaintiffs-Appellants filed a Reply. (Doc. 13). On July 18, 2024, the United States Court of Appeals for the Third Circuit denied the Appellants Motion for injunction pending appeal or, alternatively, to expedite appeal (Doc. 26).

- On July 11, 2024, Defendants filed a Motion to Dismiss Class Action Complaint in the *Love* matter (Doc. 47). Plaintiffs filed their Opposition on July 22, 2024 (Doc. 48). On July 29, 2024, Defendants filed their Reply in Support of their Motion to Dismiss (Doc. No. 50).

Status of New Jersey Proceedings Before Judge Porto:

- Depositions of all expert witnesses have been completed.
- On August 16, 2024, Defendants filed their *Accutane* and dispositive motions in *Carl* and *Balderrama* with responsive briefs due by September 13, 2024, and reply briefs to dispositive motions due by September 24, 2024.
- Plaintiffs did not file any *Accutane* or dispositive motions.
- The parties filed post-trial briefs on the issue of disqualification of the Beasley Allen law firm on May 17, 2024 to Your Honor and Judge Porto. Replies were filed on May 24, 2024. On July 19, 2024, the MCL Court denied Defendants' Motion for Disqualification (Docket No. ATL-L-2648-15). On July 19, 2024, this Court entered an order directing the parties to show cause why the MCL Court's findings of fact and conclusions of law should not be adopted. On July 25, 2024, Defendant J&J and LLT Mgt. filed their response to the Court's July 19, 2024 Show Cause Order (ECF 33026). A Text Order was issued by the MDL court on July 31, 2024, granting Beasley Allen leave to file a response to the Show Cause Order by August 5, 2024. On August 5th, Beasley Allen submitted a responsive brief (ECF 33065). On August 6th, Defendants filed a letter requesting leave to file a reply to Birchfield's and Beasley Allen's August 5th response. The Court granted the request for leave on August 7, 2024 (ECF 33069). On August 12, 2024, Defendants filed their Supplemental Reply to the Court's July 19, 2024, Show Cause Order Explaining Why the Court Should Not Adopt the State MCL Judge's Findings of Fact and Conclusions of Law on Their Motion to Disqualify Beasley Allen from This Litigation (ECF 33084).

Honorable Rukhsanah L. Singh,
U.S. Magistrate Judge

- 7 -

August 22, 2024

- On August 8, 2024, Defendants filed a Motion for Leave to File an Interlocutory Appeal of the Trial Court's July 19, 2024, Opinion and Order regarding the denial of Defendants' motion to disqualify Beasley Allen. On August 19, 2024, Beasley Allen filed their Opposition. The matter is docketed at AM-000635-23.

Thank you for your attention to these matters.

Respectfully,

/s/ Susan M. Sharko

Susan M. Sharko

**FAEGRE DRINKER BIDDLE & REATH
LLP**

cc: Leigh O'Dell, Esq. (via e-mail)
Michelle Parfitt, Esq., (via e-mail)
All counsel of record (via ECF)